# SUPREME COURT OF THE UNITED STATES.

Nos. 524 and 525.—October Term, 1920.

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| The United States of America, Plaintiff in Error, 524 vs. The Coronado Beach Company. Same, Appellant, 525 vs. Same. | In Error to and Appeal from the District Court of the United States for the Southern District of California. |

[March 28, 1921.]

Mr. Justice Holmes delivered the opinion of the Court.

These cases arise out of a proceeding brought by the United States under the Act of July 27, 1917, c. 42, 40 Stat. 247, for the double purpose of ascertaining the rights of private parties in North Island in the harbor of San Diego, California, and of condemning the whole of said island for public purposes after the value of such rights has been fixed and paid into Court. The proceeding was begun by a bill in equity against the Coronado Beach Company. In its answer that Company alleged title to the whole island, and after a hearing obtained a decree in its favor, subject to the question of the rights of the United States brought up by the appeal in No. 525. The case then was transferred to the law side, the value of the plaintiff's island was assessed by a jury, and a judgment was entered that upon payment of $5,000,000 into Court within thirty days the United States might have a final order of condemnation. The writ of error in 524 presents the questions raised in this stage of the case.

The title of the Coronado Beach Company is derived from a Mexican grant of May 15, 1846, to one Carillo, a Mexican citizen, the Company having succeeded to his rights. At this point it is necessary to mention only that Carillo is given the right to enclose the land 'without prejudice to the crossings, roads, and servitudes'.

The grant was under a law of August 18, 1824, by the fifth section of which "If, for the defence or security of the nation, the Federal Government should find it expedient to make use of any portion of these lands for the purpose of constructing warehouses, arsenals, or other public edifices, it may do so, with the approbation of the General Congress, or during its recess with that of the Government Council." Hall, Laws of Mexico, 148, § 492. The United States interprets this as a reservation of power against all persons, as one of the servitudes to which the Carillo grant was subject, and as a sovereign right to which it succeeded when the land became territory of the United States. We cannot accept so broad an interpretation. We need not repeat the discussion in *Arguello* v. *United States*, 18 How. 539, wherein it was laid down that the first eight sections apply wholly to colonists and foreigners. The decision immediately concerned the fourth section of the law, but the ground for the construction given to it was that the others obviously were limited as stated and that there was no reason for giving to the fourth a greater scope. Moreover the second section states that "The objects of this law are those national lands which are neither private property nor belong to any corporation or pueblo and can therefore be colonized." *United States* v. *Yorba*, 1 Wall. 412. It is hardly credible that section five should have been intended to reserve the right to displace private owners, and wholly incredible that it reserves the right to do so without compensation, especially when it is noticed that by the law of April 6, 1830, the value of lands taken for fortification, &c., is to be credited to the States. *Camou* v. *United States*, 171 U. S. 277, 284, 285. Hall, Laws of Mexico, 108, § 291.

The more serious questions arise on the writ of error and concern primarily the extent of the grant; the main dispute being whether the Company owns the tide lands in front of the upland of the island. Carillo's petition states as its ground that he is in want of proper land for the breeding of cattle and horses and asks the grant for a cattle farm of the island or peninsula in question, bounded substantially as in the subsequent grant, viz: on the north by the Estero of San Diego towards the town, east by the end of the rancho of Don Augustin Meliso, south by the sea, and west by the bay or anchorage for ships, as explained by the map which goes with the espediente. On April 20, 1852, Billings and

others then holding the title petitioned the Commissioners to settle Private Land Claims, appointed under the Act of March 3, 1851, c. 41; 9 Stat. 631, to confirm to them this tract of land. The petition was rejected by the Board but on appeal the title was declared good and confirmed by the District Court of the United States. The decree stated the boundaries on the north, east and south as in the original grant, and "west by the anchorage for ships according to the documents of title and map to which reference is had". This decree was filed on January 12, 1857; on May 7, 1867, after an appeal to this Court had been dismissed, there was a substitution of Peachy and Aspenwall as parties, and on June 11, 1869, a patent was issued reciting the decree, a return with a plat of a survey approved under § 13 of the Act of 1851, and giving and granting to them the land described in the survey. The Mexican map is not in the record and is not material since the plat accompanying the patent of the United States shows the line marking the 'Anchorage for Ships', which includes the tide lands in dispute.

The jurisdiction of the decree and the validity of the patent so far as they cover the tide lands is denied by the United States, a special reason being found in the fact that California became a State in 1850 and thereby acquired a title to the submerged lands before the date of the decree. But the title of the State was subject to prior Mexican grants. The question whether there was such a prior grant and what were its boundaries were questions that had to be decided in the proceedings for confirmation and there was jurisdiction to decide them as well if the decision was wrong as if it was right. The title of California was in abeyance until those issues were determined, as the decree related back to the date of the original grant. The petitioner asked a confirmation of the tract conveyed to Carillo. The grant to Carillo was bounded 'west by the anchorage for ships' and although it well may be that in view of the purpose set out in his petition and the circumstances the grant could have been construed more narrowly, that was a matter to be passed upon and when the decree and the patent went in favor of the grantee it is too late to argue that they are not conclusive against the United States. It is said that the field notes, not put in evidence at the trial, show that the deep water line was not surveyed, but was taken from the Coast Survey maps. But however arrived at it was adopted by the United States for

its grant and it cannot now be collaterally impeached. *Knight* v. *United Land Association*, 142 U. S. 161. *San Francisco* v. *Le Roy*, 138 U. S. 656. *Beard* v. *Federy*, 3 Wall. 478. It was suggested that the bill might be regarded as a direct attack upon the patent; but this probably was an afterthought and in any event the attack would be too late. Act of March 3, 1891, c. 561, § 8; 26 Stat. 1099. *United States* v. *Chandler-Dunbar Water Power Co.*, 209 U. S. 447, 450.

A subordinate objection is urged to the admission of maps or drawings showing the adaptability of the island to a great system of improvements possible if the Coronado Beach Company owned the submerged land. It is urged that such improvements were speculative, remote, and not shown to be commercially practicable. But the drawings were admitted only to illustrate the opinion of the witness as to value and were explained as meaning no more. If the reasons for his opinion were inadequate they detracted from the weight of his testimony but were not inadmissible on that account.

Finally it is contended that the Government took only the upland. But the Act of 1917 provides for the taking of 'the whole of North Island' and for 'the determination and appraisement of any rights private parties may have in said island', and the bill follows the act and prays that if the defendant company has any right to the tract or any part thereof the right 'and the whole thereof' may be 'appraised and condemned.' We discover no error in the proceedings below.

*Decree and judgment affirmed.*

Mr. Justice CLARKE took no part in the decision of this case.

A true copy.

Test:

*Clerk Supreme Court, U. S.*